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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 185

CHARLES E. TREIBLY, PETITIONER

v.

DR. WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 9–18) is reported at 147 F. 2d 705.

JURISDICTION

The judgment of the court of appeals was entered February 20, 1945 (R. 18–19). On May 19, 1945, by order of the Chief Justice, the time to file a petition for a writ of certiorari was extended

to June 29, 1945 (R. 23). The petition for a writ of certiorari was filed June 29, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Navy may order a member of the Navy to be treated in St. Elizabeths Hospital as an insane person without allowing him a hearing at which he has the right to summon witnesses and have the effective assistance of counsel.

STATUTE INVOLVED

R. S. § 4843 (24 U. S. C. 191) provides in pertinent part as follows:

> The superintendent [of St. Elizabeths Hospital], upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:
>
> First. Insane persons belonging to the Army, Navy, Marine Corps, and Coast Guard.
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> * * * * *

STATEMENT

Petitioner, a Lieutenant Commander in the Navy (retired), was received at St. Elizabeths Hospital in 1923, upon the order of the Secretary of the Navy. In June 1926, he filed a petition for a writ of habeas corpus in the then Supreme Court for the District of Columbia, in which he attacked the validity of his detention. He was ordered discharged from custody, but on appeal the judgment was reversed, the decision in that case turning on the question whether petitioner, as a retired officer, was still subject to the jurisdiction of the Secretary of the Navy under R. S. § 4843. *White* v. *Treibly,* 19 F. 2d 712 (App. D. C.); see also R. 9. In June 1927, petitioner was again received at St. Elizabeths Hospital upon the order of the Secretary of the Navy (R. 5).

The present proceeding arose upon a petition for a writ of habeas corpus filed in January 1944 in the United States District Court for the District of Columbia in which petitioner attacked the legality of his confinement on the ground that at no time had he been found to be of unsound mind by any medical board or by the Commission on Mental Health of the District of Columbia, and on the further ground that he was then sane (R. 1). The writ issued (R. 2), and respondent, the Superintendent of St. Elizabeths, filed an answer in which he admitted that petitioner had

been received at the hospital upon the order of the Secretary of the Navy without having been adjudged of unsound mind in the District of Columbia, and denied that petitioner was of sound mind (R. 3–5). The district court, without apparently hearing evidence as to petitioner's mental condition, ordered his release on the ground that the commitment of petitioner to St. Elizabeths upon the order of the Secretary of the Navy "was unlawful and violative of due process," in that petitioner "was committed without a hearing upon his mental condition" (R. 6).

On appeal, the court of appeals held that petitioner, as a person in military service, could properly be committed upon the order of the Secretary of the Navy. It recognized, however, that the Secretary could not commit arbitrarily; that his order must be issued only after proper inquiry but that that did not require the rejection of "skilled military judgment on mental disease" "in favor of civilian psychiatric testimony". The court also recognized that since the Superintendent of St. Elizabeths is authorized by the statute to hold only insane persons, the remedy of habeas corpus is available to determine whether there is a sufficient showing of petitioner's present sanity, an inquiry not theretofore had, and ruled that in the event there is such a showing, the district court may order petitioner's discharge unless within five days after the entry of its order the Secre-

tary of the Navy directs that petitioner be reexamined and recommitted (R. 10–18). The court accordingly reversed the order of the district court and remanded the cause for further proceeding in conformity with its opinion (R. 18–19).

ARGUMENT

Petitioner's contention that he is illegally detained at St. Elizabeths Hospital is fundamentally a challenge to the power of the Naval authorities to determine that a member of the Naval forces is insane and to order his hospitalization and treatment accordingly. Under the statute (*supra,* p. 2), St. Elizabeths Hospital is properly used for the care of insane service personnel, and there can be no doubt that, if petitioner was properly found to be insane, he may be validly confined at St. Elizabeths rather than some naval hospital upon the order of the Secretary of the Navy. The statute and subsequent enactments in respect of the classes of persons to be admitted to St. Elizabeths (see 24 U. S. C. 191–196 (b)) show clearly that admission to that hospital is a privilege extended to certain groups of citizens found to be insane and are not *per se* lunacy statutes regulating the procedure for the determination of insanity. See *Barry* v. *Hall,* 98 F. 2d 222, 226–227 (App. D. C.). Civilians are adjudged insane; military personnel are found to be insane by

military medical authorities.[1] Both are merely transferred to St. Elizabeths for treatment.

Clearly, therefore, petitioner's contention that he is improperly detained in St. Elizabeths is not supported by proof that he was not adjudged insane in accordance with the procedure established for civilians in the District of Columbia. Neither would the absence of any judicial determination of insanity establish an illegal detention. "To those in the military or naval service of the United States, the military law is due process." *Reaves* v. *Ainsworth*, 219 U. S. 296, 304. See also *French* v. *Weeks*, 259 U. S. 326; *Creary* v. *Weeks*, 259 U. S. 336. There can be no question that the determination of the insanity of military personnel may properly be made by a military tribunal rather than by a court.

The real question in this case is whether the military procedure for the determination of insanity is constitutionally sufficient to constitute

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[1] The distinction between military personnel and civilians in this regard is of long standing. The original statute establishing an institution for the insane in the District of Columbia (Act of March 3, 1885, c. 199, 10 Stat. 682) provided for the care of insane members of the Army and Navy by order of the Secretary of War or Navy, respectively (sec. 4), and for the admission of indigent insane persons of the District of Columbia "after due process of law showing the person to be insane" (sec. 5). 24 U. S. C. 196, 196 (a), and 196 (b) provided for the admission of American citizens "legally adjudged insane" in the Canal Zone, Canada, and the Virgin Islands.

due process. The record contains no proof as to how such determination was made.[2] However, the records which we have obtained from the Navy Department show that in 1922, during the course of an examination for promotion, petitioner exhibited symptoms of mental disorder. On September 8, 1922, he was admitted to the United States Naval Hospital, in Washington, D. C., for observation. On October 27, 1922, the Naval Retiring Board recommended his retirement and its recommendation was approved on November 17, 1922. In November, 1922, he was discharged from the Naval Hospital in the custody of his wife. In October, 1923, his wife reported that she was unable to manage him and he was again admitted to the Naval Hospital. On October 31, 1923, the Board of Medical Survey recommended his transfer to St. Elizabeths.

During the period that petitioner was released from St. Elizabeths after his first habeas corpus proceeding, he was committed to the Manhattan State Hospital in New York. After the decision of the court of appeals in *White* v. *Treibly*, *supra*, at the request of his relatives he was transferred to St. Elizabeths on the recommendation

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[2] The decision of the district court was apparently based upon the ground, in accordance with the contention of petitioner, that the Secretary of the Navy cannot commit naval personnel to St. Elizabeths Hospital except after a hearing at which they have the right to present evidence and be represented by counsel (R. 6).

of the Board of Medical Survey.[2] This procedure was clearly sufficient to meet the standard laid down in the opinion of the court below (R. 10), that the determination of insanity be not arbitrarily made and that the order of the Secretary of the Navy be issued after due inquiry. The absence of a hearing with opportunity to defend would render the procedure insufficient to satisfy the test of due process which has been established for civilians. See *Barry* v. *Hall*, 98 F. 2d 222 (App. D. C.). However, as the court below pointed out (R. 10), members of the military forces are in a different position from civilians in respect of medical treatment. Military men, who in other respects are not free to go where they please when they choose, are also not free to accept or refuse medical care. An authority which may send men to battle has both the duty and the power to care for the men under its control to a degree beyond that exercised in the case of civilians. The treatment of the mentally ill is merely one aspect of such control, the importance of which has, as the court below pointed out (R. 10–11), been emphasized by the experience of World War II. Considering the special relationship which military authorities have to the persons in

[2] The procedure followed in petitioner's case conformed with that outlined in the Manual of the Medical Department of the United States Navy, published by the Bureau of Medicine and Surgery under the authority of the Secretary of the Navy (see Pars. 2151–2160).

their care, we think that the court below properly held that a determination of the necessity for medical treatment may validly be made without a hearing at which the patient is entitled to be represented by counsel and to call witnesses; that due process is satisfied if the determination is conscientiously made after appropriate inquiry. Cf. *Douglas* v. *King*, 110 F. 2d 911 (C. C. A. 8), upholding the constitutionality of the statute (18 U. S. C. 876) providing for the transfer of federal prisoners to an institution for the insane merely upon the recommendation of a board of examiners.[4]

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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[4] The question of petitioner's present sanity is not now involved since, as appears from the decision of the court below, that issue has been reserved for determination upon remand (R. 18–19).

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